*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 2661 OF 1995

% 12.12. 2006

G. Ramarao.

..... Petitioner

Vs.

$ Government of A.P. rep., by its Secretary, Education Department, Secretariat, Hyderabad and two others.

.....Respondents

! Counsel for the petitioner: Sri P.V. Sanjay Kumar

^ Standing Counsel for respondents: G.P. for Higher Education

< Gist:

>Head Note

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[1] 1988(2) ALT 237
2 1988(2) ALT 577
3 1990(2) APLJ 12
4 (2005) 7 SCC 190
5 AIR 2001 Rajasthan 51
6 AIR 1997 SC 1125
7 1990(2) SCC 715
8 2005(1) SCC 444
9 AIR 1990 SC 334
10 AIR 1971 SC 2355
11 AIR 1965 SC 1153
12 AIR 1971 SC 1676
13 AIR 2005 SC 2227
14 2004(12) SCC 673

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.2661 of 1995

JUDGMENT:

The present writ petition is filed for a direction to the respondents to regularize the petitioner's services, as a lecturer in chemistry, with effect from 4.12.1983, with all consequential benefits and to hold the action of the respondents in treating him as a regular

lecturer in chemistry only with effect from 27.1.1993, instead of from 4.12.1983, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

The petitioner obtained his post graduate degree in chemistry, from Kakatiya University, in first division in the year 1981. He was appointed, vide proceedings dated 1.9.1982, as a part-time lecturer in chemistry in the 3rd respondent – college. His appointment, as a part-time lecturer in chemistry, was to cease from the end of the academic year 1982-83 or from the date on which regular appointments were made, whichever was earlier. According to the petitioner, his appointment as a part-time lecturer in chemistry was against a clear vacancy and, having regard to the terms and conditions of his appointment, he was entitled to be appointed on a regular basis. Petitioner would submit that, in order to fill up certain vacancies, including for the post of lecturer in chemistry, the 3rd respondent had issued an advertisement in the Indian Express on 18.8.1993, inviting applications from qualified candidates. It was stated therein that the post was un-aided and that appointments would be made on a temporary basis on a consolidated pay of Rs.600/- per month. The selection committee, which met on 04.12.1983, selected the petitioner for appointment to the post of lecturer in chemistry. Petitioner would submit that, from amongst the six applications received, a panel of three candidates was finalized, by the selection committee, wherein he was placed at Sl.No.1. The Selection Committee, (consisting of the president of the college, the secretary and correspondent of the college, a representative of the Osmania University, the District Educational Officer and the principal of the college), in its proceedings dated 4.12.1983, had recorded that the selected candidates may be appointed in the respective posts/vacancies provided they were eligible according to their turn in their respective rosters of communal rotation as per the government orders in force. Petitioner would submit that, on the basis of the decision of the selection committee, in its meeting held on 4.12.1983, he was appointed as a lecturer in chemistry on a consolidated pay of Rs.600/- per month though he was entitled to be appointed, as a lecturer in chemistry, on a regular basis in view of the orders of the correspondent of the college dated 1.9.1982. According to the petitioner he was being paid a consolidated pay of Rs.600/- per month both prior to the decision of the selection committee on 4.12.1983 and thereafter, though no order appointing him as a lecturer in chemistry was issued pursuant to the aforesaid decision. The petitioner filed W.P.14771 of 1985 seeking a direction to the respondents to consider his claim for appointment to the post of lecturer in Chemistry giving effect to the recommendations of the selection committee dated 4.12.1983 with all consequential benefits. The said Writ Petition was disposed of by order dated 26.9.1989, wherein this Court observed thus:-

"……The questions raised herein, as reported by the counsel appearing for the petitioner as also the Asst. Govt. Pleader, Education, are squarely covered by the decision rendered by Choudary,J in W.P.No.2699/86 and batch on 1.4.1988. **This writ petition is therefore disposed of in terms of the said order passed by Choudary, J. The petitioner shall be accordingly entitled to the benefits of G.O.Ms.No.905 dated 21st September, 1976, if he was selected pursuant to the procedure prescribed in the said G.O**……." (emphasis supplied)

In **D.G.Krishnamacharyulu v. Government of A.P.**[1], (W.P.2699 of 1986 and batch dated 1.4.1988), P.A.Choudary, J observed:

"…….. With its step-motherly treatment meted out to primary and high school education, the State is unconstitutionally pampering the college and University education and producing too many degree-holders for the good of the society. Many of the degree-holders, who are otherwise not fit to be employed, are chasing the few but well paid teaching posts in colleges and universities. **This batch of writ petitions is filed by some of those lecturers. They were all appointed in various private colleges during the years 1980-85. During the period and even earlier appointments to teaching posts in the private colleges receiving State aid were made by following the method of selection made by a selection committee consisting of the Principal of the private college, a representative of the management, two representatives of the university and a Government nominee. Some of the lecturers have been so selected following the method of selection by the selection committee. Others were not so selected. They were selected only by the private management without the intervention of the selection committee. But both classes of teachers were appointed as per G.O.Ms.No.1023 dated 4th November, 1976 and G.O.Ms.No.905 dated 21st September, 1977 on adhoc basis. Their appointments were described as part time and, temporary. Some of them were not appointed to timescale but were appointed on a consolidated pay per month. Some were appointed on piece-rate basis of Rs.10/- per day.** Now the complaint of these petitioners is against the application of Act 13 of 1985 called A.P. College Service Commission Act, 1985 to their posts.

According to the contention of the Government the posts to which these petitioners have been appointed should be regarded as not having been filled-up permanently and should, therefore, be treated as vacant on the day of the commencement of the Act which is 1st October, 1985 and should, therefore, be filled up by the College Service Commission. The above Act is an enactment passed in pursuance of a report submitted by a three-man committee headed by a former Chief Justice of this Court Sri P. Jaganmohan Reddy. That committee recommended the setting up of central recruitment agency for recruiting to all the teaching posts in the private aided colleges. The Government has accepted that report obviously for the reason that the quality of the degree-holders turned-out by the Universities is not reassuring. But the Government took several years before enacting the above Act No.13 of 1985. Meanwhile, lecturers like the petitioners have been appointed to the teaching posts either following the procedure of the selection or even without following that procedure. Section 9 of the Act says that all existing vacancies should be filled up by the College Public Service Commission. The question is whether the posts filed up by the petitioners should be treated as existing vacancies or not.

I am of opinion that those teachers who have been selected following the procedure of selection should be treated as regularly filling the posts notwithstanding the fact that their appointments were described as temporary or adhoc on the assumption that the Jaganmohan Reddy Committee report should be made into law immediately. That assumption has been belied by the failure of the State to enact the College Service Commission Act till the year 1985. I, therefore, think it unjust to treat the posts as being vacant notwithstanding the fact that they have been substantial compliance with the existing law in the matter of their appointments.

On the other hand, I think that those who have been appointed by the private managements without the intervention of the process of selection be regarded as not filling the posts. For this distinction, I rely upon the difference between the two types of selection made. In the case of first group the vital provisions of law for selection have been adhered to whereas in the case of second group of persons that vital provision o flaw has been totally disregarded.

The argument of the petitioners that the process of selection has commenced prior to October, 1, 1985 and that the same process should be continued even for the regularization ignores not only the scheme of G.O.Ms.Nos.905 and 1023 but also Act No.13 of 1985 under the existing law. The services of those appointed contrary to the above G.Os, cannot be regularized. Today except through a College Service Commission no existing vacancy could be filled. That position is made abundantly clear by Sections 8 and 9 of the College Service Commission Act. On the basis that appointments made without intervention of selection committees are ad hoc, I reject the petitioner's argument. I cannot derive any benefit from any of the judgments in **Daily Rated Casual Labour Employed Under P & T Department vs. Union of India (AIR 1987 SC 2342)**, **Bhagawan Dass v. State of Haryana** (AIR 1987 SC 2049) which have been cited.

In this batch of writ petitions the question which of the petitioners fall under what category has not been investigated, because the learned counsel for the petitioners had never advanced any arguments, relevant to the individual cases. He only attempted to advance that argument after I dictated this order. Even otherwise, such an exercise would involve spending of a lot of time of this Court. **I would, therefore, direct the petitioners to approach the Director of Higher Education who will examine the claims if any made by each one of these petitioners in the light of this judgment. Where he finds that a particular teacher has been appointed after going through the process of selection by the duly constituted committee as per the above mentioned two G.Os. he shall notify that fact to the concerned petitioners and the management so that those posts will be taken out of the purview of the Act No.13 of 1985.**

The Director of Higher Education shall dispose of the representations if any, filed by the petitioners within two months from the date of their representation. The petitioners will file their representations within two weeks from the date of the receipt of this order……" (emphasis supplied).

According to the petitioner, since his appointment was made in accordance with G.O.Ms.No.905 dated 21.9.1976, he was entitled to be appointed as a regular lecturer in chemistry from 4.12.1983, i.e., the date on which the Selection Committee considered and included his name at Sl.No.1 in the panel of selected candidates. He would contend that G.O.Ms. No. 599 dated 30.12.1983 could not be made applicable retrospectively in respect of the selections held prior to its coming into force.

The government, vide G.O.Ms.No.554 dated 5.11.1986, directed the Director of Higher Education to take over the 3rd respondent college with all its assets. Under the said G.O. the expenditure, of the staff in the unaided sections, had to be met from the plan provision of Higher Education Department. Petitioner would contend that, pursuant to the orders in G.O.Ms. No. 554 dated 5.11.1986, all unaided posts are required to be treated as aided. Instead of treating the petitioner as a regularly selected lecturer the principal of the 3rd respondent college, vide proceedings dated 13.11.1989, terminated his services with effect from 27.9.1989. The order dated 13.11.1989 read as if the petitioner was being terminated pursuant to the orders of this Court in W.P.14471 of 1995, though the order of this Court provided to the contrary. Aggrieved thereby, the petitioner filed W.P.16417 of 1989 and interim orders were passed in W.P.M.P.21683/89 dated 24.11.1989. On the ground that the interim order of this Court was disobeyed by the respondents, the petitioner filed C.C.211 of 1990. W.P.No.16417 of 1989 and C.C.211 of 1990 filed by the petitioner were disposed of, along with W.P.Nos.15708 and 16409 of 1989and C.C.No.74 and 210 of 1990, by common order dated 4.4.1991, wherein this Court observed:-

"……..In the counter affidavit filed on behalf of the respondent it is alleged that since no appointment order was issued by the erstwhile Management pursuant to the selection of the petitioner by the Selection Committee on 4.12.1983, he was continued as a part time lecturer. Further more, the College Service Commission is the only competent authority for selection of candidates for teaching posts and the Management has no power to make appointments. It is evident that this approach of the respondents is manifestly wrong in the light of the decided cases on the subject by the High Court. If the petitioner ha been selected by a duly constituted Selection Committee and his name figures at Serial No.1 in the panel suggested by the Selection Committee, then it is obvious that he must be appointed as a full time Lecturer. **The only ground on the basis of which the application of the petitioner for giving effect to the judgment of the Division Bench dated 12.9.1989 has been rejected, seems to be that there is no sanctioned post of Lecturer in Economics since the Government permitted the additional section in B.A. during 1980-81 without aid and with the condition that the management should not appoint full time teaching staff on this account and they should adjust with the existing staff. However, it is difficult to understand the logic behind this assertion as the petitioner was selected in pursuance of the resolution of the Selection Committee dated 4.12.1983 and was appointed as a Lecturer in Economics vide proceedings of the Correspondent No.KRR/409/B/83 dated 5.1.1984. More over, the above plea of the Government is rendered innocuous in view of the Government Order contained in G.O.Ms.No.554 dated 5.11.1986 by virtue of which the Government directed the Director of Higher Education to physically take over the K.R.R. Arts and Science College, Kodad with its assets and further directed that the expenditure on the staff in unaided sections has to be met from the plan-provisions of Higher Education. Thus, it is obvious that in view of the orders of the Government in G.O.Ms.No.554 dated 5.11.1986, the petitioner's post cannot be said to be an unaided post.** In **D.G. Krishnamacharyulu v. Government of Andhra Pradesh (1988 (2) ALT 237),** the view taken by this Court is that teachers who have been selected following the procedure of selection should be treated as regularly filling the posts notwithstanding the fact that their appointments were described as temporary or adhoc. On the other hand, those who have been appointed by the private managements without the intervention of the process of selection be regarded as not filling the posts. Similar view has been taken by

me in **Lusy Sarojini v. Special Officer (1988(2) ALT 577)**. In the **Besant Thesophical College v. S.Jahanara Begum (1990(2) APLJ 123)** also a Division Bench of this Court has taken a similar view that when a candidate was selected by the duly constituted Selection Committee and was placed at Serial No.1 in the selection list, he is entitled to be appointed on a regular basis. The consistent view taken by this court has been followed in W.P.No.6410/89 dated 15.2.1991.

In view of the above discussion, writ petition No.15708/89 is allowed and the order of the Director of Higher Education, 1st respondent, bearing No.4935/DC 5-3/87 dated 17.10.1989 is set aside. It is further directed that the petitioner shall be retained and continued as a Lecturer in Economics by granting him the pay scale attached to it pursuant to the decision of the Selection Committee dated 4.12.1983, and the consequential appointment order contained in Rc.No.KRR/409/B/83dated 5.1.1984……"

W.P.No.16417/89:

The petitioner in this writ petition assails the proceedings of the 2nd respondent bearing Rc.No.KRR/795/B/89 dated 13.11.1989 terminating his services as Part time lecturer in Chemistry with effect from 27.9.1989.

The brief facts of this case are as follows:-

The petitioner obtained a degree in M.Sc. (Chemistry) and was placed in the First Division in the year 1981. He was appointed as a part time Lecturer in Chemistry in the 2nd respondent – college vide proceedings of the Correspondent of the K.R.R.Govt. Arts & Science College, Kodad Rc.No.KRR/372/B882 dated 1.9.1988. He is fully qualified to be appointed as a full time lecturer. The authorities issued an advertisement in Indian Express dated 18.8.1983 calling for applications for appointment to the post of Lecturer in Chemistry, on a regular basis. The petitioner also submitted his application. A duly constituted Selection Committee met on 4.12.1983 and selected the petitioner for the post of Lecturer in Chemistry. The contention of the petitioner is that G.O.Ms.No.599 dated 13.12.1983 is not applicable to him as the post happens to be an unaided post. On the basis of the selection made by the selection Committee dated 4.12.1983 the petitioner was appointed as a Lecturer in Chemistry on a consolidated pay of Rs.600/- per month. In fact, the petitioner was being paid the consolidated pay of Rs.600/- per month even prior to the decision of the Selection Committee dated 4.12.1983 and even after his selection by the Selection Committee he is being continued on a consolidated pay of Rs.600/- per month.

The facts governing this case are exactly similar to the one narrated in the earlier Writ Petition No.15708/89. The petitioner claims that he is entitled to be appointed as a Lecturer in Chemistry on a regular basis. The matter arising for consideration in this writ petition is fully covered by a series of decisions, referred to in the first writ petition, viz., W.P.No.15708/89. In Lusy Sarojini v. Special Officer (2) I have already taken the view that in a situation like this no vacancy exists in the eye of law which could be notified to the College Service Commission. Viewed from any angle the case of the petitioner deserves to be considered favourably. The petitioner is entitled to be appointed as a Lecturer in Chemistry on a regular basis.

The impugned order of the 2nd respondent bearing No.KRR/795/B/89 dated 13.11.1989 is, therefore, set aside and the writ petition, viz., W.P.16417/89 is allowed……"

After pronouncing the judgment the learned counsel for the petitioners Mr.G.Mohan Rao has submitted that a time limit may be fixed for implementation of the orders of this court in all the three writ petitions. **This seems to be a reasonable request and therefore, it is directed that the judgment in W.P.Nos.15708, 16409 and 16417 of 1989 shall be implemented within two months from the date of receipt of this order……."**

It is necessary to note that in **Mrs.Lusy Sarojini v. The Special Officer & Principal, College of Arts & Science, Kamareddy, Nizamabad District**[2], (the judgment relied upon by the Learned Single Judge, while disposing of W.P.16417 of 1989 and C.C.211 of 1990, by order dated 4.4.1991), it was held:-

"……The point, therefore, which clearly emerges from the above discussion is that there were no vacancies available as required under Section 9 of the Act existing as on 1-10-85, which could be communicated to the College Service Commission to enable it to make recommendations under Section 13 of the Act. By 1-10-85 each and every one of the petitioners had already put in a service of about three years. In the information communicated to the college service commission in Annexure-I this fact has been brought to the notice of the college service commission authorities under the heading "date of appointment of all the petitioners as lecturers in the college". **These appointments have been made in accordance with the provisions of G.O.Ms.No.905 dated 21.9.1976 which allowed ad-hoc appointments to be made from time to time in the interests of continuation of education in the colleges.** More over under the provisions of G.O.Ms.No.303, dated 16.7.85 it is clearly stated under clause (iv) that on completion of the period of three years the Lecturers are entitled for regularization of appointments provided their services have been satisfactory. The petitioners had already been working at that time for a period of about three years and were entitled to regularization of their services in accordance with G.O.Ms.No.303, dated 16.7.83, referred to above. They have been selected on 14.10.86 much after

the coming into force of the College Service Commission Act by a committee consisting of eminent educationalists. These petitioners are qualified experienced lecturers and it is common knowledge that such trained expert lecturers are not easily available in the open market. The learned counsel for the petitioners appearing in this case has relied upon **Delhi C & G Mills Ltd. v. Union of India (AIR 1987 SC 2414)** of India dealing with the question of doctrine of promissory estoppel. The principle laid down in the said judgment is that the alteration of position by the party on the strength of a promise made by others is enough to make the doctrine of promissory estoppel applicable to the case. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The court, in such circumstances, would compel the opposite party to adhere to the representation acted upon or abstained from acting. However, in view of the fact that the vacancies did not exist at the relevant time, as discussed above, it may not be necessary to apply the ratio of the above case in this matter. The jurisdiction of the College Service Commission depends upon the intimation of vacancies under Section 9 of the Act and if there are no vacancies it cannot make any recommendation under Section 13 of the Act. A similar view was taken in W.P.2699 of 1987 and batch and it was held that in case of teachers who have been selected following the procedure of selection they should be treated as regularly appointed described as temporary or ad hoc on the assumption that the College Service Commission is going to be set up.

Viewed from any angle, the writ petition deserves to be allowed. **A direction is issued to the respondents to drop the proceedings initiated against the petitioners in R.C.92/E/87 dated 2-2-87 and to treat the petitioners as regularly appointed lecturers with effect from their respective date of joining the college**……**"** (emphasis supplied)

Aggrieved by the order, passed in W.P.Nos.16417 and 16409 of 1989 dated 4.4.1991, the respondents herein filed W.A.No.1114 and 1116 of 1991 which was disposed of by order dated 28.10.1991. The Division Bench observed:

"…….It is submitted by the learned Government Pleader appearing for the appellants that the college was taken over by the State Government on 5.11.1986 and the orders of termination were passed by the Government College on 13.11.1989, this court does not have any jurisdiction to entertain the Writ Petitions and the proper course open to the respondent-lecturer is to approach the Andhra Pradesh State Administrative Tribunal. From the judgment under appeal it does not appear that this plea was raised before the learned single Judge. However, the matter relates to the question of jurisdiction, we have heard the learned Government Pleader for considerable time. As we have already referred to, these of both the lecturers is covered by the two judgments referred to above rendered in the year 1989. Both the appellants herein are parties to these judgments. In these judgments, a specific direction was given to the appellants herein to consider the cases of both the respondent-lecturers in accordance with G.O.Ms.No.905 dated 21 September, 1976, but the impugned orders of termination dated 13.11.1989 show that their case was not at all considered in accordance with the direction of this Court and that their services were terminated solely on the ground that they were being continued in service pursuant to the interim direction granted by this Court. When the appellants herein did not obey the orders of this court to which they were parties and, had passed the orders of termination, we are not inclined to interfere with the order passed by the learned single Judge. The main case of the respondent-lecturers is that their services shall be treated as having been regularized as their selection was made in accordance with G.O.Ms.No.905 dated 21.9.1976. If their appointment is treated as having been made on a regular basis, according to them, after the college was taken over by the Government, it was only a case of mere continuance of their service in the Government College and the case does not relate to either recruitment or matter concerning recruitment. Therefore, according to the respondent – lecturers, Section 15 of the Administrative Tribunals Act, 1985, does not have any application and this Court has jurisdiction to entertain the Writ Petitions. We see force in the contention of the learned counsel for the respondent – lecturers. As we have already mentioned, when the two writ petitions filed by the Lecturers were disposed of in the year 1989, the appellants herein who were parties to these proceedings, did not raise any objection to the disposal of the writ petition by this Court, on the ground of want of jurisdiction. Both those writ petitions were disposed of with a direction to the respondents therein, who are the appellants herein, to consider the case of these two lecturers in accordance with G.O.Ms.No.905 dated 21.9.1976. It may also be noticed that Shri G.Rama Rao filed Writ Petition No.14771 of 1985 prior to the taking over the college by the Government and was disposed of after the college was taken over by the State Government. Admittedly the appellants did not consider the case of both these Lecturers as per the direction of this Court. On the other hand, they have terminated their services. In such circumstances, we are not inclined to accept the contention of the learned Government Pleader that this Court has no jurisdiction to entertain the writ petitions.

The learned single Judge has given very cogent reasons for setting aside the order of termination. Having regard to the facts and circumstances, we are not incline to interfere with the order. Therefore, the orders under appeal are confirmed. The writ appeals are accordingly dismissed.

This, however, does not preclude the appellants from considering the cases of both these lecturers – Shri G.Rama Rao and Shri M.Raghuramaiah – in accordance with the direction of this Court in Writ Petition

No.14771 of 1985 dated 26.9.1989 and writ petition No.3754 of 1987 dated 5.10.1989 and pass appropriate orders. Both the lecturers – Shri G.Rama Rao and Shri M.Raghuramaiah – shall be taken back into service. Their continuance shall be dependant upon the orders that the appellants may pass in accordance with the directions……" (emphasis supplied)

Pursuant to the aforesaid orders, of the Division Bench, the 2nd respondent issued proceedings dated 16.4.1992 taking the petitioner back into service. The 2nd respondent, vide proceedings dated 22.8.1992, directed the petitioner to appear for the limited recruitment of part time lecturers as prescribed in G.O.Ms.No.278 dated 30.7.1991. Pursuant to the orders passed by this Court in C.C.165 of 1992 dated 22.09.1992, filed by Sri M. Raghuramaiah, wherein the respondents were directed to consider his claim for regularization within three months from the date of receipt of the order and for payment of Rs.10,000/-, a similar order was passed, in C.C.470 of 1991 filed by the petitioner, on 1.10.1992. Finally, the 2nd respondent issued proceedings dated 27.01.1993, on the basis of the proceedings of the 1st respondent dated 23.1.1993, appointing the petitioner as a lecturer in chemistry with immediate effect in the pay scale of Rs.1810-3230.

The petitioner would contend that, while the respondents had regularized his services with effect from 27.1.1993, he had lost nearly a decade of service as he was entitled to be appointed as a lecturer from the date on which the selection committee recommended his appointment on 4.12.1983. The petitioner would contend that, in similar circumstances, this Court in **Mrs.Lusy Sarojini**[2] and **Besant Thesophical College v. S.Jahanara Begum**[3] had directed the respondents to treat similarly placed lecturers as regular employees with effect from their initial appointment.

A counter affidavit is filed on behalf of respondents 1 and 2. Respondents would submit that, since the 3rd respondent – college, in which the petitioner was working and seeks regularization, is a government college, the writ petition as filed is not maintainable and the petitioner ought to have invoked the jurisdiction of the Andhra Pradesh Administrative Tribunal instead. It is stated that the petitioner was appointed by the erstwhile private management of the K.R.R. College, Kodad as a part time lecturer in chemistry on 1.9.1982, on a remuneration of Rs.10/- per hour, though there was no sanctioned post in existence. Respondents would submit that the erstwhile private management had advertised the posts of lecturers, including the posts of lecturers in chemistry, economics and english, on 18.8.1983 in violation of the statutory rules and the government orders. It is stated that, pursuant to the advertisement, interviews were held on 4.12.1983 and in its minutes the selection committee had noted that the candidates selected may be appointed in respect of the vacancies when they are eligible according to their turn in the respective roster of communal rotation as per the government rules in force. Respondents would submit that aggrieved by the said selection and the interviews held on 4.12.1983 some of the candidates, who had attended the interview on 4.12.1983, had filed W.P.7568 of 1984 contending that the management/selection committee had not followed the rule of reservation while making selections to the posts of lecturers and that this Court had allowed the writ petition, by order

dated 13.11.1984, observing:

"……It is represented by the learned counsel for the petitioner that the college authorities are bound to implement the G.O.No.599 dated 13.12.83 and hence no controversy remains to be adjudicated. There will be a direction to implement the G.O.599 dt.13.12.83 while filling the posts of lecturers in the colleges of the second respondent pursuant to the interview held on 4.12.83. The writ petition is allowed accordingly……."

According to the respondents since this Court had directed that G.O.Ms.No.599 dated 13.12.1983 be implemented and, as the said G.O. required the rule of reservation to be followed for making selections, no appointment orders were issued to the candidates who had been selected in the interview held on 4.12.1983. However the petitioner, who was working as a part time lecturer even prior thereto, was continued in service. It is stated that the government had issued orders for taking over the management of KRR College with effect from 29.8.1984 and that, as per the rules/orders in force, all vacant posts existing in the college, including the post of lecturer in chemistry, were notified to the A.P. College Service Commission. Reference is made to W.P.14771 of 1985 filed by the petitioner and to the order of this Court dated 5.10.1989. According to the respondents as the petitioner was continued in service contrary to the directions of this Court in W.P.7568 of 1984, and G.O.Ms. No. 599 dated 30.12.1983, his services were terminated with effect from 27.9.1989 i.e., the date following the date of the judgment in W.P.14771 of 1985. Reference is also made to the order of this Court in W.P.16417 of 1989 dated 4.4.1991 and to the observations of the Division Bench, in W.A.Nos.1114 and 1116 of 1991 dated 28.10.1991, that dismissal of the Writ Appeals did not preclude the appellants from considering the cases of both the lecturers, (including the petitioner), in accordance with the directions of this Court in W.P.14771 of 1985 dated 26.9.1989. Respondents would submit that on the representations made by certain qualified part-time lecturers, working in government/junior colleges, orders were issued in G.O.Ms.No.278 dated 30.7.1991 prescribing the procedure for limited recruitment for appointment of part time lecturers as lecturers in these colleges. Keeping in view the length of service rendered by them as part-time lecturers they were permitted to apply, for appointment to the posts of lecturers to the competent authority, in terms of G.O.Ms.No.278 dated 30.7.1991. Reference is also made to C.C.No.470 of 1991 filed by the petitioner and to the order of this Court dated 1.10.1992. It is stated that, in order to comply with the orders of the High Court, the Government was requested to relax the rule of reservation in favour of the petitioner to enable the Commissioner of Collegiate Education to appoint them as lecturers and accordingly the Government, in its memo dated 23.1.1993, had issued orders approving the proposals of the Commissioner of Collegiate Education for appointment and regularization of the services of the petitioner as a lecturer in chemistry, and Sri M. Raghuramaiah as a lecturer in english, in relaxation of the rules of reservation with effect from the date of issue of the order so as to enable the Commissioner of Collegiate Education to implement the orders of this Court dated 4.4.1991 and that the Commissioner was also permitted to pay a sum of Rs.10,000/-, towards their consolidated remuneration for the period for which they were kept out of service, from the grant in aid budget. It is stated that in turn the Commissioner of Collegiate Education, in his proceedings dated 27.1.1993,

had appointed the petitioner as a lecturer in chemistry with immediate effect in Zone VI in the existing vacant post in the scale of pay of Rs.1810-3230. Respondents would contend that the petitioner was not entitled to be regularized in service with effect from 4.12.1983 since he was appointed in an unaided post on a consolidated pay of Rs.600/- per month, that the selections in December, 1983 were made without following the rule of reservation and as such no appointment orders were issued. Since the petitioner was working as a part time lecturer, even prior to the selections held on 4.12.1983, he was allowed to continue to work as a part time lecturer, but that did not confer on him any right to claim regularization of his services with retrospective effect and that the proceedings dated 27.1.1993 was issued pursuant to the orders of this Court.

Sri P.V. Sanjay Kumar, learned counsel for the petitioner, would contend that since the selection committee, which considered the case of the petitioner for appointment as a lecturer in chemistry, was constituted in accordance with G.O.Ms.No.905 dated 21.9.1976, and as the petitioner was selected as a regular lecturer and placed at Sl.No.1 in the panel of selected candidates, he was entitled to be appointed as a regular lecturer with effect from 4.12.1983. Learned Counsel would submit that the rule of reservation, prescribed in G.O.Ms.No.599 dated 30.12.1983, could not be made applicable retrospectively to the selections made on 4.12.1983. Learned counsel would submit that, as the conditions stipulated in G.O.Ms.No.905 dated 21.9.1976, that employment should not be for more than one academic year, was held to be illegal by this Court, no reliance could be placed on this condition to contend that the petitioner was not entitled to the benefits of G.O.Ms.No.905 dated 21.9.1976. According to the learned Counsel, since the government was a party to all the writ petitions filed by the petitioner earlier, the judgments of this Court, inter parties, is binding on them and it is not open for the respondent to deny the petitioner the benefit of being treated as a regularly appointed lecturer with effect from 4.12.1983. Learned counsel would submit that, since the petitioner is merely seeking implementation of the orders of this Court for being appointed as a regular lecturer with effect from 4.12.1983, his only remedy is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and not the Andhra Pradesh Administrative Tribunal constituted under the provisions of the Administrative Tribunals Act, 1985. Learned counsel would submit that the contention raised by the respondents earlier, regarding the lack of jurisdiction of this Court, had been rejected by the Division Bench in W.A.No.1114 and 1116 of 1991 dated 28.10.1991. Learned counsel would submit that the petitioner is not aggrieved by the order of regularization dated 27.1.1993 in its entirety and, as it is only that portion of the appointment order which grants him regularization from 27.1.1993 and denies him the benefit of regularization from 4.12.1983 which he is aggrieved by, it is not necessary for him to challenge the proceedings dated 27.1.1993 in its entirety. Learned counsel would submit that the cause of action, in the present writ petition, is in continuation of the previous orders of this Court and, as it is not a distinct cause of action, the petitioner has rightly invoked the jurisdiction of this Court under Article 226 of the Constitution of India. Learned counsel would submit that since the Division

Bench of this Court, in W.A.No.1114 and 1116 of 1991 dated 18.10.1991, had held that the writ petition is maintainable, the said order inter parties is binding on the respondents and it is not open for them to raise this contention again in the present writ petition. Learned counsel would rely on **Ishwar Dutt Vs. Land Acquisition Collector**[4] and **Barkat Ali Vs. Badrinarain**[5] in this regard.

Learned Government Pleader for Higher Education, on the other hand, would submit that the petitioner was appointed as a temporary lecturer, on an hourly basis in an unaided vacancy, by the private management without having obtained prior permission from the competent authority. Learned Government Pleader would submit that there was no sanctioned post of lecturer in chemistry, and in the absence of any sanction being accorded, the notification issued by the third respondent college on 18.8.1983 was in violation of the rules. Learned Government Pleader would submit that, since the rule of reservation had not been followed in the selections held on 4.12.1983, the selections and the appointments made pursuant thereto were illegal. Learned Government Pleader would refer to the order of this Court, in W.P.7568 of 1984 dated 13.11.1984, wherein the respondents were directed to follow the rule of reservation. Learned Government Pleader would submit that a similar relief sought for in W.P.No.3693 of 1986 was dismissed by this Court by order dated 23.12.1988, and this Court had observed:-

".....The petitioner was appointed as part-time lecturer on October, 12, 1981 by K.R.R. College, Kodad, Nalgonda District, the second respondent herein. An advertisement was made for making regular appointments on August 18, 1983, pursuant to which the petitioner offered himself as one of the candidates. A committee constituted under G.O.Ms.Nos.703 and 198 made selections. The petitioner was one of the candidates selected. By the date of appointments, the Andhra Pradesh College Education Act came into force. Consequently, the appointments had not been given effect to. The petitioner is seeking a writ of mandamus to consider his case for appointment to the post of Lecturer in Economics on regular basis as recommended by the Selection Committee on July 4, 1983 with consequential benefits.

In view of the fact that an Act was passed and the appointment of the petitioner was otherwise than a regular selection, the direction sought for cannot be given....."

Learned Government Pleader would submit that Writ Appeal No.1035 of 1989, filed against the order in W.P.3693 of 1986, was disposed of by order dated 12.9.1989 wherein the Division Bench held:

"........The writ petitioner was working as a lecturer under the 2nd respondent. Claiming to be entitled to the benefits of G.O.Nos.905 dated 25.9.76 and claiming that he has been selected by the Selection Committee mentioned in that G.O. the petitioner filed the writ petition No.3693/86 claiming relief. The said writ petition was dismissed by the learned single Judge on 13.12.88. Thereafter the petitioner filed Review W.P.M.P.8397/89 and the same was also dismissed on 28.4.89. It is against the original order dated 13.12.88 and the order dated 28.4.89 refusing to review the said order, the present writ appeal has been filed.

In this writ appeal, the 1st respondent is represented by the Govt. Pleader for Education. The 2nd respondent, the private college, was served on 11.8.89 and it has remained ex parte.

Before us it is agreed by the appellant and the learned Government Pleader that both the judgments of the learned single Judge, one dated 23.12.88 and the other dated 28.4.89 may be set aside and the matter may be remitted to the 1st respondent, for going into the question whether the petitioner has been selected pursuant to the procedure indicated in G.O.No.905 dated 25.9.76. If the 1st respondent comes to the conclusion that the petitioner has been so selected, the petitioner will be governed by the judgment of P.A.Chouwdary, J. in W.P.No.2699/85 dated 1.4.88. The Director of Higher Education (R1) shall then issue appropriate orders to the 2nd respondent, notwithstanding the fact that the petitioner's services have since been terminated by the 2nd respondent. It is stated before us that the services of the petitioner have been terminated consequent to the judgment dated

13.12.88. The 1st respondent is directed to decide the matter within one week from the date of receipt of this order. The petitioner will also furnish the necessary particulars before the 1st respondent…..". (emphasis supplied)

Learned Government Pleader would contend that the order of appointment dated 27.1.1983 has not been specifically challenged and as such the petitioner must be held to have acquiesced to these proceedings and to have waived his right to seek regularization from a date anterior thereto. She would submit that the 2nd respondent had issued proceedings dated 27.1.1993 after obtaining permission of the government and, since the said proceedings dated 23.1.1993 has not been challenged in this writ petition, the petitioner is not entitled to any direction contrary thereto. Learned Government Pleader would submit that, unlike in the earlier proceedings wherein the Division Bench had observed that there was no plea of lack of jurisdiction, such a plea has been specifically raised in the present writ petition. Learned Government Pleader would contend that, in any event, the law laid down in **L.Chandra Kumar v. Union of India**[6] required the petitioner to invoke the jurisdiction of the Tribunal in the first instance before approaching this Court under Article 226 of the Constitution of India. Learned Government Pleader would submit that the 3rd respondent – college was taken over by the Government, in G.O.Ms.No.554 dated 5.11.1986, and prior thereto the petitioner was employed in a private college. According to the learned Government Pleader it is only for aided posts in private colleges that the Government provides financial assistance in the form of grant in aid and that regularization of services cannot be claimed from a date which would include services rendered in an unaided post in a private college.

Since the learned Government Pleader has raised an objection to the maintainability of the writ petition itself, on the ground that the petitioner ought to have invoked the jurisdiction of the Tribunal in the first instance before approaching this Court under Article 226 of the Constitution of India, it is necessary to examine this question first before the other contentions are dealt with.

It is not in dispute that the 3rd respondent college was taken over by the Government, vide G.O.Ms. No. 554 dated 05.11.1986, and, thereafter, since the 3rd respondent is a government college, any grievance which its employees may have, with regards their conditions of service, can be redressed by invoking the jurisdiction of the A.P. Administrative Tribunal, a Tribunal constituted under the Administrative Tribunals Act, 1985. In **L. Chandra Kumar Vs. Union of India**[6], the Supreme Court observed:

"**…….**The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. **The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where**

they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated……." (emphasis supplied)

The A.P. Administrative Tribunal, continues to act as a court of first instance in respect of the areas of law for which it has been constituted. It will not, ordinarily, be open to a litigant to directly approach the High Court without invoking its jurisdiction in the first instance. Sri P.V. Sanjay Kumar, learned counsel for the petitioner would, however, contend that since the Division Bench of this Court, in W.A. Nos. 1114 and 1116 of 1991 dated 28.10.1991, had rejected the very same plea of lack of jurisdiction and as the said judgment, inter parties, constitutes resjudicata it is not open to the respondents to raise this plea of lack of jurisdiction in subsequent proceedings where the cause of action is in continuation of the cause before the Division Bench. Learned Government Pleader for Higher Education, on the other hand, would contend that unlike before the Division Bench, where no plea of lack of jurisdiction was taken, in the present writ petition the respondents have specifically raised this plea. Learned Government Pleader would contend that an earlier decision, on the question of jurisdiction, cannot constitute resjudicata.

In this context it is required to be noted that the Division Bench, in Writ Appeal No. 1114 of 1991 dated 28.10.1991, had held that, though when the writ petitions came to be filed the ground of want of jurisdiction was not taken by the respondents, the question of jurisdiction was being examined as the respondents had been heard for a considerable time. The Division Bench held that, while the case of the petitioner was covered by the order of this Court in W.P. No. 14771 of 1985 dated 26.09.1989, wherein this Court held that the petitioner shall be entitled to the benefit of G.O.Ms. No. 905 dated 21.09.1976 if he was selected pursuant to the procedure prescribed in the said G.O, the order of termination showed that their case was not at all considered in accordance with the directions of the Court and, since the respondent authorities had not obeyed the orders of this Court to which they were parties and had passed the orders of termination, the Division Bench expressed its disinclination to accept their contention that this Court had no jurisdiction to entertain the writ petition.

The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is found and a judgment of the High Court under Article 226, passed after a hearing on merits, must bind the parties till set aside in appeal. (**Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra**[7]; **UPSRTC Vs. State of U.P.**[8]).

The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final, and binding between the parties, it cannot be set at naught even on the ground that such a decision is violative of the provisions of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates Constitutional

provisions. (**Supreme Court Employees Welfare Association Vs. Union of India**[9]). An order passed by a Court having jurisdiction over the subject matter, and over the parties, cannot be ignored as a nullity unless such erroneous orders are corrected in accordance with law. Such orders bind the parties in a subsequent litigation or before the same Court in the subsequent stage of the proceedings. (**Barkat Ali**[5])

A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties. The matter in issue may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata. The reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party, and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure or abstract question of law, unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision. The decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will operate as res judicata in a subsequent proceeding between the same parties if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. (**Mathura Prasad Sarjoo Jaiswal Vs. Dossibai N. B. Jeejeebhoy**[10]). But, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same. (**Supreme Court Employees Welfare Association Vs. Union of India**[9]).

The principle of res judicata would apply not only in different proceedings arising out of the same cause of action but would also apply in different stages of the same proceedings. The principle of res judicata is a specie of the principle of estoppel. When a proceeding

based on a particular cause of action has attained finality, the principle of res judicata shall fully apply. Reference in this regard may be made to *Wade and Forsyth on Administrative Law*, 9th Edn., p. 243, wherein it is stated:

"One special variety of estoppel is res judicata. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again, even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it. As between one another, they may neither pursue the same cause of action again, nor may they again litigate any issue which was an essential element in the decision. These two aspects are sometimes distinguished as cause of action estoppel and issue estoppel".

In *The Doctrine of Res Judicata*, 2nd Edn. by George Spencer Bower and Turner, it is stated:

"A judicial decision is deemed final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete, and certain, and when it is not lawfully subject to subsequent rescission, review, or modification by the tribunal which pronounced it".

(**Ishwar Dutt**[4]).

Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a court competent to decide it and which proceedings have attained finality, will operate as res judicata in subsequent proceedings on the same matters in controversy between the same parties. (**Gulabchand Chhotalal Parikh Vs. State of Gujarat**[11]; **State of Punjab Vs. Bua Das Kaushal**[12]). The rule of conclusiveness of judgments, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent proceeding between the same parties is the rule of res judicata. Once a matter which was the subject-matter of a lis stood determined by a competent Court, no party thereafter can be permitted to reopen it in a subsequent litigation. The principle of res judicata envisages that a judgment of a Court of concurrent jurisdiction directly upon a point creates a bar as regards a plea, between the same parties in some other matter in another Court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment. (**Swamy Atmananda** v. **Swami Bodhananda**[13]; **Iswar Dath**[4]). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (**State of Haryana Vs. State of Punjab**[14]).

In W.P. No. 14771 of 1985, the petitioner herein had sought a mandamus from this Court to direct the respondents to consider his claims for appointment to the post of lecturer in chemistry in the 3rd respondent college on the basis of the recommendations of the selection committee dated 04.12.1983 with all consequential benefits. The order of this Court, in W.P. No. 14771 of 1985 dated 26.09.1989, has attained finality. Further in W.P. No. 16417 of 1989 and C.C. No. 211 of 1990 filed by the petitioner herein, which was heard and disposed of along with W.P. Nos. 15708 and 16409 of 1989 and C.C. Nos. 74 and 210 of 1990, this Court, by order dated 04.04.1991, had held that the petitioner was entitled to be

appointed as a lecturer in chemistry on a regular basis. The order passed by the learned single judge, in W.P. No. 16417 of 1989 dated 04.04.1991, was confirmed by the Division Bench in W.A. No. 1114 of 1991 dated 28.10.1991. It is no doubt true that the Division Bench, while confirming the orders passed in W.P. No. 16417 of 1989 dated 04.04.1991, had observed that the respondents were not precluded from considering the case of the petitioner in accordance with the earlier direction of this Court in W.P. No. 14771 of 1985, dated 26.09.1989 and that their continuation shall be dependant upon the orders that may be passed in accordance with such directions. Not only did the respondents not reject the petitioner's request for regularization on the ground that he was not selected pursuant to the procedure prescribed in G.O.Ms. No. 905 dated 21.09.1976 and was not entitled to the benefits thereunder, they had, on the other hand, appointed him as a lecturer in chemistry in the pay scale of Rs. 1810-3230 vide proceedings dated 27.01.1993. Since this Court, in W.P. No. 16417 of 1989 dated 04.04.1991, had held that the petitioner was entitled to be appointed as a lecturer in chemistry on a regular basis, the said decision of this Court, a judgment inter parties which has attained finality, is binding on the respondents. Since the question raised in the present writ petition is intrinsically connected with the facts in issue in the earlier Writ Petitions, (W.P. No. 14771 of 1985 dated 26.09.1989 and W.P. No. 16417 of 1989 dated 04.04.1991 as confirmed in W.A. No. 1114 of 1991 dated 28.10.1991), the judgments of this Court in the aforesaid writ proceedings are binding inter parties.

As the cause of action in the present writ petition, and the relief sought for, is a direct consequence of the aforesaid decisions of this Court, binding inter parties, this Court has jurisdiction to entertain the writ petition. As the petitioner, in effect, seeks implementation of the earlier orders of this Court, relegating him to invoke the jurisdiction of the Tribunal would be a needless formality since the Tribunal is not entitled to sit in judgment over the earlier orders of this Court inter parties and which have attained finality.

Learned Government Pleader would contend that since the petitioner has not questioned the government memo dated 23.01.1993, or the proceedings of the Commissioner of Collegiate Education dated 27.01.1993, and, as both these proceedings required the petitioner to be appointed from the date of order, it was not open to the petitioner to contend that his services, as a lecturer in chemistry should be regularized with effect from 04.12.1983. The government, in its memo dated 23.1.1993, (cited as the 6th reference in the proceedings of the Commissioner of Collegiate Education dated 27.01. 1993), had issued orders permitting the Commissioner to appoint the petitioner as a lecturer in chemistry in relaxation of the rule of reservation from the date of issue of the orders. There is nothing on record to indicate that a copy of the government memo dated 23.01.1993 was served on the petitioner herein. Even otherwise, pursuant to the proceedings of the Commissioner, dated 27.01.1993, the petitioner was appointed as a lecturer in chemistry in the 3rd respondent college with immediate effect from the date of issue of the proceedings. The petitioner is not aggrieved by the order dated 27.01.1993 appointing him as a lecturer. He is only aggrieved

to the limited extent that he was appointed with effect from 27.01.1993 as against his claim for regularization from 04.12.1983. The action of the respondents, in treating him as a lecturer in chemistry with effect from 27.01.1993, instead of from 04.12.1983, is under challenge in the present writ petition as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and, to this limited extent, the prayer in the writ petition includes a challenge to the proceedings of the Commissioner of Collegiate Education dated 27.01.1993. As such this contention of the Learned Government Pleader must also be rejected.

Learned Government Pleader would further contend that the petitioner is not entitled to claim regularization with effect from 04.12.1983 as the rule of reservation was not followed by the selection committee while making its recommendations for appointment to the posts of lecturers in the 3rd respondent college. Learned Government Pleader would place reliance on G.O.Ms. No. 599 dated 30.12.1983 and to the order of this Court in W.P. No. 7568 of 1984 dated 13.11.1984. G.O.Ms.No.599, Education (J) Department dated 30-12-1983, are the instructions issued for implementation of the rule of reservation in the matter of recruitment of teaching staff in private degree colleges. The method of implementation of the rule of reservation, in respect of teaching staff in private degree colleges, was prescribed thereunder with roster and carry forward provisions for unfilled vacancies from year to year on the analogy of similar orders issued in respect of the teaching staff in universities in G.O.Ms.No.927 dated 20-11-1982 and in respect of teaching staff in private junior colleges in G.O.Ms.No.997 dated 16-12-1982. The instructions issued, in G.O.Ms. No. 559 dated 30.12.1983, by the Government, to all private degree colleges in the State for strict compliance of the rule of reservation in respect of the teaching staff, reads thus:

> "i) The rule of reservation for direct recruitment shall be applied and followed in respect of the teaching staff in the private degree colleges in the State.
>
> ii) The entire class of teaching posts both in degree and post graduate course (if any) in each private degree College shall be regarded as One Unit for purpose of recruitment.
>
> iii) The roster system for appointments prescribed in rule 22 of the Andhra Pradesh State and Subordinate Service Rules, in application to scheduled castes, scheduled tribes and backward classes, shall be maintained and followed for filling up of vacancies direct recruitment of the posts of teaching staff in the private degree Colleges.
>
> iv) All the reserved vacancies which have not been filled up in the past by persons belonging to backward classes including Scheduled Castes and Scheduled Tribes for want of non-availability of such persons be filled by carrying forward the reserved vacancies for the persons belonging to the said communities. This is subject to the condition that overall representation of such persons shall not exceed 50% of the total strength of vacancies in any grade or category of the posts."

This Court, in its order in W.P. No. 7568 of 1984 dated 13.11.1984, held that the respondents should implement G.O.Ms. No. 599 dated 30.12.1983 while filling up the posts of lecturers in the respondent colleges pursuant to the interview held on 04.12.1983. According to the Learned Government Pleader, since the rule of reservation had not been followed by

the selection committee, while selecting the petitioner to the post of lecturer in chemistry, no reliance can be placed by the petitioner on the proceedings of the selection committee dated 04.12.1983 to contend that he was entitled for regularization with effect from that date. While the contention of Sri P.V. Sanjay Kumar, learned Counsel for the petitioner, that G.O.Ms. No. 599 dated 30.12.1983 cannot be given retrospective effect or made applicable to the selections held earlier on 04.12.1983, cannot be said to be without merit, since the petitioner is not entitled for regualarisaition from 04.12.1983 for reasons mentioned hereinafter, it is not necessary for this Court to examine as to whether the petitioner's selection on 04.12.1983 is in violation of the rule of reservation and whether the rule of reservation, in G.O.Ms. No. 599 dated 30.12.1983, could be applied to the earlier selections held on 04.12.1983 pursuant to the orders of this Court in W.P. No. 7568 of 1984 dated 13.11.1984. There is considerable force in the submission of the Learned Government Pleader that, since the 3rd respondent college was taken over pursuant to G.O.Ms. No. 554 dated 05.11.1986, and prior thereto the petitioner was employed, in an unaided post on an hourly basis, as a temporary lecturer in a private college to which the government was merely providing financial assistance in the form of grant in aid, that too only to aided posts, the question of granting him the benefit of regularization from a date anterior to G.O.Ms. No. 554 dated 05.11.1986 does not arise.

In the present writ petition, we are concerned only with the earlier orders of this Court in W.P. No. 14771 of 1984 dated 26.09.1989, and W.P. No. 16417 of 1989 dated 04.11.1991 as confirmed in Writ Appeal No. 1114 of 1991 dated 28.10.1991. The aforesaid orders of this Court, judgment inter parties, are binding both on the petitioner and the respondents herein, as they have attained finality. Learned Government Pleader for Higher Education would submit that, since under G.O.Ms.No.905 dated 21-09-1976 lecturers selected by the selection committee were required to be appointed only on a stop-gap basis and employed for not more than one academic year, the order of this Court in W.P. No. 14771 of 1984 dated 26.09.1989 would not confer any right on the petitioner to claim regularization from 04.12.1983, Sri P.V. Sanjay Kumar, learned counsel for the petitioner, on the other hand, would submit that such a restriction in G.O.Ms. No. 905 dated 21.09.1997 was held to be invalid and that, in any event, the restriction on recruitment under the said G.O. was limited only to demonstrators/tutors/assistant lecturers and junior lecturers and not to lecturers and, since the petitioner was continued as a lecturer in chemistry, this restriction in G.O.Ms.No.905 dated 21-09-1976 had no application. G.O.Ms.No.905 Education (C) Department dated 21-09-1976 are the instructions issued by the government for recruitment of teachers in private colleges, pursuant to the recommendation of a three Man Committee for setting up of a 'Central Recruitment Agency' for all teaching posts in affiliated colleges to be called the 'College Service Commission'. The government, with a view to ensure that the colleges did not suffer for want of teachers, till the 'College Service Commission' was set up and started its work, gave the management an option to employ, on a stop-gap basis, lecturers and principals other than those who were recruited by the Central Recruitment

Agency. The G.O. specified that, in such cases, the teachers must be selected by a selection committee, (and not by the Managing Committee itself), consisting of two representatives of the management, two professors or readers representing the university to which the college is affiliated and a representative of the Director of Higher Education. For lecturers, selected in this manner, the pay scales were to be the existing D.A. merged state pay scales of Rs.530-1050. The Government directed that such employment should not be for more than one academic year and beyond that period no grant-in-aid should be given for such posts. The G.O. also provided that, as a sequel to the acceptance of the recommendations of the three man Committee, recruitment to the posts of demonstrators/tutors and assistant lecturers and junior lecturers in the degree colleges should be stopped henceforth.

It is not for this Court, in subsequent writ proceedings, to examine the correctness or otherwise of the earlier orders of this Court which has attained finality. In W.P. No. 14771 of 1985 dated 26.09.1989, this Court had passed orders in terms of the orders passed in **D.G. Krishnamacharyulu**[1], (W.P. No. 2699 of 1986 and batch dated 04.04.1988), wherein it was held that the teachers who have been selected by following the procedure prescribed in G.O.Ms. No. 905 dated 21.09.1976 should be treated as regularly filling the posts notwithstanding the fact that their appointments were prescribed as temporary or adhoc. In **D.G. Krishnamacharyulu**[1], this Court had directed the Director of Higher Education to examine the claims, if any, made by each one of the petitioners therein in the light of the judgment. Similarly, in W.P. No. 14771 of 1985 dated 26.09.1989 also, this Court had held the petitioner would be entitled to the benefits of G.O.Ms. No. 905 dated 21.09.1976, if he was selected pursuant to the procedure prescribed in the said G.O. While, both in **D.G. Krishnamacharyulu**[1] and W.P. No. 14771 of 1985, the authorities were required to examine as to whether or not the petitioner's selection was pursuant to G.O.Ms. No. 905 dated 21.09.1976, their claim for regularization has not been rejected by the respondents on the ground that they do not fulfill the conditions stipulated therein. Since this Court, in W.P. No. 14771 of 1985 dated 26.09.1989, did not give a direction, despite such a relief having been sought for therein, to consider the petitioner's claim for appointment to the post of lecturer in chemistry, on the basis of the recommendations of the selection committee dated 04.12.1983, I see no reason, in the present writ petition, to grant the petitioner the relief which he was not granted in W.P. No. 14771 of 1985 dated 26.09.1989. The judgment in W.P. No. 14771 of 1985 dated 26.09.1989 is binding on the petitioner also and, having failed to obtain the relief claimed therein, the petitioner is not entitled for the said relief in the present writ petition.

In W.P. No. 16417 of 1989 dated 04.4.1991, this Court had held that the petitioner was entitled to be appointed as a lecturer in chemistry on a regular basis. While the learned single judge had relied on the earlier judgment, in **Mrs.Lusy Sarojini**[2], wherein the respondents were directed to treat similarly placed lecturers as regular employees with

effect from their initial appointment, the relief granted in **Lucy Sarojini** was not extended to the petitioner. The order, in W.P. No. 16417 of 1989 dated 04.4.1991, was confirmed in Writ Appeal No. 1114 of 1991 dated 28.10.1991, and the Appeal was dismissed. It is no doubt true, as has been emphasized by the Learned Government Pleader, that the Division Bench, while confirming the orders passed in W.P. No. 16417 of 1983 dated 04.4.1991, had held that their order did not preclude the appellants therein, (respondents in the present writ petition), from considering the case of the petitioner in accordance with the earlier directions in W.P. No. 14771 of 1985 dated 26.09.1989 and pass appropriate orders. The fact that the respondents herein had not rejected the petitioner's claim for regularization, in accordance with the directions in W.P. No. 14771 of 1985 dated 26.09.1989, despite being granted liberty by the Division Bench in Writ Appeal No. 1114 of 1991 dated 28.10.1991 to do so, is not in dispute. On the other hand, the respondents herein have regularized the services of the petitioner and have appointed him as a lecturer in chemistry with effect from 27.01.1993. The order of this Court, in W.P. No. 16417 of 1989 dated 04.04.1991, has been confirmed in Writ Appeal No. 1114 of 1991 dated 28.10.1991 and has attained finality. It is not open to either parties, in the present writ petition, to question the correctness or otherwise of the said judgment to which they were parties to. Since this Court, in W.P.No.16417 of 1989 dated 4.4.1991, has held that the petitioner is entitled to be appointed as lecturer in chemistry on a regular basis, the said decision of this Court is resjudicata and cannot again be placed in contest between the same parties in subsequent proceedings i.e, the present writ petition. The declaration of this Court, in W.P.No.16417 of 1989 dated 4.4.1991, would enure to the petitioner's benefit and he shall be entitled to be treated as a lecturer in chemistry, appointed on a regular basis, from the date of the order of this Court i.e., 04.04.1991.

The writ petition is allowed in part and the respondents herein are directed to regularize the services of the petitioner and issue orders appointing him as lecturer in chemistry, on a regular basis, with effect from 04.04.1991, i.e., from the Zdate of the order of this Court in W.P. No. 16417 of 1989 dated 04.04.1991. The petitioner shall also be entitled for all consequential benefits as a result of his being appointed as a lecturer in chemistry on a regular basis from 04.04.1991. The entire exercise in this regard, including payment of the amounts due to the petitioner, as a consequence of this order, shall be completed within a period of four months from the date of receipt of a copy of this order.

The writ petition is allowed in part. However, in the circumstances, without costs.

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Date: .12.2006 RAMESH RANGANATHAN, J

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B/o
MRKR/ASP

[1] 1988(2) ALT 237

[2] 1988(2) ALT 577

[3] 1990(2) APLJ 12

[4] (2005) 7 SCC 190

[5] AIR 2001 Rajasthan 51

[6] AIR 1997 SC 1125

[7] 1990(2) SCC 715

[8] 2005(1) SCC 444

[9] AIR 1990 SC 334

[10] AIR 1971 SC 2355

[11] AIR 1965 SC 1153

[12] AIR 1971 SC 1676

[13] AIR 2005 SC 2227

[14] 2004(12) SCC 673